



# Excise Tax Advisory

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Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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## **Taxability of air transportation and other activities performed with aircraft**

Federal law prohibits states from taxing certain air transportation activities. This Excise Tax Advisory explains what air transportation activities are exempt from Washington's sales and gross receipts taxes under federal law. It also provides specific examples of both taxable and nontaxable air transportation activities and aviation services, and identifies the appropriate tax classifications that apply to those taxable activities.

### **Air transportation activities exempt from state taxation under federal law**

Federal law prohibits states from levying a tax on: "(1) an individual traveling in air commerce; (2) the transportation of an individual traveling in air commerce; (3) the sale of air transportation; or (4) the gross receipts from that air commerce or transportation." 49 U.S.C. § 40116(b). The term "air transportation" means interstate or foreign air transportation of passengers or property as a common carrier for compensation, or the transportation of U.S. or foreign transit mail by aircraft. *See* 49 U.S.C. § 40102(a)(5), (23), (25), and (29). The term "air commerce" includes, among other things, "the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce." 49 U.S.C. § 40102(a)(3).

In *Aloha Airlines, Inc. v. Director of Taxation*, 464 U.S. 7 (1983), the U.S. Supreme Court held that 49 U.S.C. § 1513(a) (presently codified in substantially similar form at 49 U.S.C. § 40116(b)) prohibited the imposition of state and local gross receipts taxes on the sale of air transportation or the carriage of persons traveling in air commerce.

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The Department of Revenue has concluded that federal law prohibits the state of Washington from taxing the air transportation activities listed below. The list is intended to be representative of the types of activities that are exempt and should not be considered as all-inclusive.

- Transportation of passengers to intrastate, interstate, or foreign destinations including both charter flights and regularly scheduled flights. A “charter flight” means a flight operated under the terms of a charter contract between an air carrier and its charterer or lessee. It does not include scheduled air transportation sold on an individually ticketed or individually waybilled basis. A “regularly scheduled flight” means a flight operated on a regular recurring basis between two points as listed in a published schedule which has been made readily available to the public. Any additional charge to a passenger for transporting excess luggage is considered incidental to hauling the passenger and is not considered to be a charge for transporting property.
- Hauling property to interstate or foreign destinations.
- Hauling U.S. or foreign transit mail.
- Air ambulance transportation of passengers, including both intrastate and interstate air transportation of patients and medical personnel.
- Interstate non-passenger air ambulance transportation of property such as human organs, medical supplies, and equipment.

#### **Taxable air transportation activities and aviation services**

The following is a list of taxable air transportation and aviation services grouped by appropriate excise tax reporting classification. The list is intended to be representative of the types of activities that are performed with aircraft and should not be considered as all-inclusive.

#### **Other public service business public utility tax:**

- Intrastate hauling of property, except U.S. or foreign transit mail.
- Intrastate non-passenger air ambulance transportation of property such as human organs, medical supplies or equipment.

#### **Retailing business and occupation (B&O) and retail sales taxes:**

- Sightseeing.
- Lease or rental of aircraft without a pilot. This activity is commonly referred to as the “bare” rental of aircraft. (See also WAC 458-20-211.)

#### **Service and other activities B&O tax:**

- Crop dusting, seeding, spraying, cattle roundup, livestock feeding, and similar agricultural related activities. (See also WAC 458-20-209 for additional information about spraying crops.)
- Aerial spraying in urban and suburban areas, including insecticide application to eradicate pest insects like the Gypsy Moth.

- Towing banners or gliders.
- Aerial surveying.
- Powerline or pipeline patrol.
- Carrying passengers to look at real estate, take photographs, shoot video, search for persons or property, or for other purposes where the flight originates and ends at the same location.
- Student instruction and training flights, including solo flight training where the pilot is a registered student in a bona fide training program, is at all times flying in a regulated pattern, and is at all times under the control of an instructor. The use of an aircraft by a student for a solo flight that does not meet the above conditions is taxable as a bare rental of aircraft.

**Processing for hire B&O tax:**

- Intrastate transportation of logs by helicopter from the place of severance to a landing from which the logs will be transported to a mill. (See also WAC 458-20-13501.)

**Extracting for hire B&O tax:**

- Intrastate transportation of Christmas trees by helicopter from the place of severance to a site where further processing and/or transportation will occur. (See also WAC 458-20-13501.)

